

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 28368-2-III**

**Appellant,**

**v.**

**TASHA ANN HANSON,  
A.K.A.: Tasha Ann Douglas,**

**Respondent.**

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**Division Three**

**UNPUBLISHED OPINION**

Kulik, C.J. —A jury found Tasha Hanson guilty of second degree theft after she rented a gas cut-off saw and did not return it to Pasco Rentals. The court granted Ms. Hanson’s motion to arrest the jury verdict, finding the evidence was insufficient to prove possession and intent. The State appeals. We review de novo a trial court’s decision to arrest judgment. Here, we conclude that any rational trier of fact, viewing the evidence in the light most favorable to the State, could find beyond a reasonable doubt that Ms. Hanson intended to exert unauthorized control and deprive Pasco Rentals of the saw. Accordingly, we reverse the trial court, reinstate the jury verdict, and remand for sentencing.

## FACTS

On September 27, 2008, Tasha Hanson and Ramon Galvez-Jaimes went to Pasco Rentals so that Ms. Hanson could rent a saw. The saw was valued at \$700. René Ponce, a Pasco Rentals salesman, rented the saw to Ms. Hanson. Mr. Ponce testified that Ms. Hanson signed the rental agreement because Mr. Galvez-Jaimes did not have identification. Mr. Ponce remembered Mr. Galvez-Jaimes saying that he brought his wife “so she could get it.” Report of Proceedings (July 1, 2009) at 47. Mr. Ponce testified that Mr. Galvez-Jaimes said that Ms. Hanson was going to rent the saw for him so that he could cut a piece of metal.

Mr. Ponce was under the impression that even though Ms. Hanson was the one who signed the agreement, Mr. Galvez-Jaimes would be the person who would actually use the saw. Later, Mr. Ponce learned that Mr. Galvez-Jaimes was on the Pasco Rentals’ no-business list for previously failing to return rented equipment.

The agreed-upon rental period was 24 hours. When the saw was not returned within the 24-hour rental period, Pasco Rentals made several attempts to contact Ms. Hanson. However, telephone calls made by Pasco Rentals were not returned, and its certified letters came back unclaimed. Contrary to the assertions of Ms. Hanson, there is

no evidence indicating she told an employee of Pasco Rentals that the saw had been stolen.

Eric Tidrick, the owner of Pasco Rentals, filed a stolen property report with the police department on October 29, 2008. Officer Tom Ninemire attempted to contact Ms. Hanson at her listed address. Officer Ninemire was met at the door by Chauncey Howard. Mr. Howard informed the officer that Ms. Hanson lived at that address but that she was not home. Mr. Howard told Officer Ninemire that he would tell Ms. Hanson that she needed to contact the authorities regarding the saw. Ms. Hanson did not contact Officer Ninemire about the saw. And the saw was not returned to Pasco Rentals.

Ms. Hanson was charged with one count of second degree theft. At the conclusion of the State's case, the defense moved to dismiss. The trial court denied the motion, finding that there was enough evidence for the case to go to the jury. Ms. Hanson did not testify and presented no other evidence at trial. The jury found her guilty as charged.

During its deliberations, the jury submitted two inquiries to the court. In response to the first inquiry, the court referred the jury to the jury instructions. The jury also informed the court that it was missing jury instruction 11. Jury instruction 11 defined the term "unauthorized control." There is nothing in the record indicating that this inquiry was answered. However, jury instruction 11 appears in the record before this court and

presumably was read to the jury.

Ms. Hanson filed a motion to reverse conviction, arguing that the State failed to present any evidence proving that she exerted unauthorized control over the saw and that she intended to deprive Pasco Rentals of the saw. The trial court granted Ms. Hanson's motion on the basis that the State failed to prove that Ms. Hanson actually possessed the saw.

The State moved for reconsideration. The court denied this motion, finding that the evidence was insufficient to prove possession and intent. The court determined that while Ms. Hanson may have had a contractual right to exercise control over the saw, there was no evidence indicating that she did exercise control over the saw. The court also found there was no basis to convict Ms. Hanson as an accomplice because the evidence did not establish her intent to cooperate with Mr. Galvez-Jaimes in accomplishing the theft. On August 14, 2009, an order was entered arresting the jury verdict and dismissing the case. The State appeals.

#### ANALYSIS

“After a verdict or decision is rendered in a criminal case, a defendant may bring a motion in arrest of judgment for ‘insufficiency of the proof of a material element of the crime.’” *State v. Huynh*, 107 Wn. App. 68, 76, 26 P.3d 290 (2001) (quoting CrR 7.4(a)).

Review of a trial court's decision on a motion for arrest of judgment requires this court to engage in the same inquiry as the trial court. *Huynh*, 107 Wn. App. at 76-77 (quoting *State v. Longshore*, 141 Wn.2d 414, 420, 5 P.3d 1256 (2000)).

"The evidence presented in a criminal trial is legally sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence in a light most favorable to the state, could find the essential elements of the charged crime beyond a reasonable doubt." *Longshore*, 141 Wn.2d at 420-21. "We view both circumstantial and direct evidence as equally reliable and we 'defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of evidence.'" *State v. White*, 150 Wn. App. 337, 342, 207 P.3d 1278 (2009) (quoting *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004)).

The trial court did not grant the defense's motion to dismiss at the end of the State's case. The court concluded that there was sufficient evidence to send the case to the jury for consideration. After the jury verdict of guilty, but without any further evidence, the trial court concluded the evidence was insufficient to prove beyond a reasonable doubt that Ms. Hanson exerted unauthorized control over the saw or that she intended to deprive Pasco Rentals of the saw and granted the arrest of judgment. The State challenges both of these conclusions.

Unauthorized Control. The jury convicted Ms. Hanson of second degree theft.<sup>1</sup>

“‘Theft’ means . . . [t]o wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services.” RCW 9A.56.020(1)(a). “A person is guilty of theft in the second degree if he or she commits theft of . . . [p]roperty or services which exceed(s) two hundred fifty dollars in value but does not exceed one thousand five hundred dollars in value.” Former RCW 9A.56.040(1)(a) (2007). “Wrongfully obtains” or “exerts unauthorized control” means:

Having any property or services in one’s possession, custody or control as . . . renter . . . to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto.

RCW 9A.56.010(19)(b).

The State contends that the fact the saw was not returned to Pasco Rentals within the rental period proves that someone exerted unauthorized control over the saw. In the State’s view, Ms. Hanson’s failure to respond to Pasco Rentals’ and Officer Ninemire’s efforts to contact her constitutes strong circumstantial evidence that she exerted

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<sup>1</sup> Ms. Hanson was not charged with theft of rental property under RCW 9A.56.096, which establishes a presumption of intent when a person renting property fails to return, or make arrangements to return, the property 72 hours after receipt of the proper notice following the due date.

unauthorized control over the saw.

The evidence presented by the State showed that Ms. Hanson and Mr. Galvez-Jaimes walked into Pasco Rentals together. While Mr. Galvez-Jaimes told Mr. Ponce he was the one who was going to use the saw, Ms. Hanson signed the paperwork because Mr. Galvez-Jaimes did not have identification.<sup>2</sup> Ms. Hanson and Mr. Galvez-Jaimes left the store, and Ms. Hanson never returned the saw.

No evidence was presented to explain what happened to the saw after it was taken from the store. When the saw was not returned in a timely fashion, Pasco Rentals made several attempts to contact Ms. Hanson. However, these telephone calls were not returned, and the certified letters came back unclaimed. Officer Ninemire went to Ms. Hanson's home and confirmed with a resident that she lived there, but was not home. Ms. Hanson did not contact Officer Ninemire. This evidence shows that Ms. Hanson both exerted unauthorized control over the saw and intended to do so.

*Intent.* The State contends the jury could reasonably infer from the evidence presented that Ms. Hanson intended to deprive Pasco Rentals of the saw.

“‘[S]pecific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.’” *State v. Goodman*, 150

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<sup>2</sup> At this time, Mr. Ponce was not aware that Mr. Galvez-Jaimes was on the no-rent list.

Wn.2d 774, 781, 83 P.3d 410 (2004) (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)).

Here, the evidence presented indicated that Ms. Hanson intended to deprive Pasco Rentals of the saw. Ms. Hanson signed for the saw and then failed to return the saw or respond to Pasco Rentals' and Officer Ninemire's efforts to contact her. As noted, circumstantial and direct evidence are equally reliable. A rational juror viewing the evidence in the light most favorable to the State could find that Ms. Hanson intended to deprive Pasco Rentals of the saw. Thus, it was error to grant the motion to arrest judgment.

Because we reverse the motion for arrest of judgment based on sufficiency of the evidence, we need not consider the State's last assignment of error regarding accomplice liability.

Jury Instruction 11. Ms. Hanson contends that, if this court does elect to reverse the trial court's ruling, she is entitled to a new trial because the jury was not instructed on jury instruction 11 (defining "exert unauthorized control"). Ms. Hanson points to the inquiry from the jury that states, "We are missing Instruction 11." Clerk's Papers at 32. The record does not show whether the court did or did not make a response to this inquiry.



CrR 6.15(c) and (d) provide that the court shall provide counsel with a copy of the jury instructions, and that the court shall *read* the instructions to the jury. It is unclear from the record whether the jury misplaced and then found the instruction, which would explain why the court made no response, or whether the instruction was not provided to the jury either before or after the inquiry was sent to the court. Jury instruction 11 does appear in the instructions of the court provided in the record here. From the record, the jury did not make any additional inquiries regarding jury instruction 11.

Ms. Hanson relies on *State v. Sanchez*, 122 Wn. App. 579, 94 P.3d 384 (2004). *Sanchez* concluded that a court's failure to *read* an instruction containing an essential element of the crime was manifest constitutional error because this essentially removed the element from the jury. *Id.* at 590-91. Here, Ms. Hanson has not cross-appealed so she did not assign error to jury instruction 11. Also, Ms. Hanson merely cites *Sanchez* and makes no argument concerning manifest constitutional error. Her reference to *Sanchez* is contained in her two-sentence argument.

Nonconstitutional errors not objected to at trial are waived on appeal. RAP 2.5(a)(3) . We will review objectionable errors only if they rise to the level of a manifest constitutional error. *State v. Russell*, 125 Wn.2d 24, 86, 882 P.2d 747 (1994). Here, the record does not show that an error was “flagrant” or “ill intentioned” to such an

extent as to cause insurmountable prejudice. *See State v. Gentry*, 125 Wn.2d 570, 640, 888 P.2d 1105 (1995).

Jury instruction 11 appears to have been read to the jury as it is contained in the jury instructions. Ms. Hanson did not raise an objection at the time the court received the inquiry concerning this instruction. Had she done so, jury instruction 11 would have been provided, if it had not already been provided to the jury. Ms. Hanson's failure to object at trial waives her objection on appeal. *Russell*, 125 Wn.2d at 86.

We reverse the trial court's order arresting jury verdict and dismissing the defendant. We affirm the conviction for second degree theft and remand for sentencing.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Korsmo, J.

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Siddoway, J.